

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK B. HARRIS,

Plaintiff,

v.

HENRY RICHARDS,

Defendant.

Case No. C06-5074RBL

REPORT AND  
RECOMMENDATION

Noted for May 26, 2006

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff is a resident at the Washington State Department of Social and Health Services' ("DSHS") Special Commitment Center ("SCC"). This matter is before the Court on plaintiff's failure to comply with the Court's two orders to file an amended complaint or show cause why this matter should not be dismissed. (Dkt. #6 and #8). After a review of the record, the undersigned submits the following report and recommendation, recommending the Court dismiss this action for failure to comply with the Court's orders.

DISCUSSION

On February 23, 2006, the undersigned ordered plaintiff to file an amended complaint by no later than March 24, 2006, informing him that he was attempting to improperly litigate this matter as a class action, and that he had failed to indicate that he personally had suffered any injury. (Dkt. #6). The

undersigned directed plaintiff to limit the action only to himself in the amended complaint. Rather than file an amended complaint, however, on March 3, 2006, plaintiff filed an “answer” to the undersigned’s order, providing certain information regarding a medical claim he had with the State of Washington, and stating that he does his own service, but needed signed summons to do so. (Dkt. #7).

On April 10, 2006, the undersigned issued an order finding plaintiff’s response to be- entirely inadequate. (Dkt. #8). As clearly noted in the undersigned’s prior order, plaintiff was required to file an amended complaint. However, plaintiff’s “answer” did not suffice as such. In addition, the undersigned noted that while it may be he was willing to effect his own service, the fact remains the undersigned found his complaint to be inadequate and would dismiss it on that basis unless he agreed to amend it.

To that end, the undersigned granted plaintiff one more chance to file an amended complaint by no later than May 10, 2006, that complied with the undersigned’s prior order to do so. In response, plaintiff has filed an “Appeal to Judge Order Dkt #8”, basically restating his medical conditions, arguing that those conditions give him standing. It is not clear if by labeling this document an “appeal”, he has intended it to be a motion to reconsider the undersigned’s second order to show cause, to be objections for the presiding district judge in this case, or to be his response to the undersigned’s second order to show cause.

Because plaintiff has not clearly and expressly stated his intention to have his “Appeal” be treated as an appeal of this matter to the presiding judge in this case, the undersigned will treat it as his response to the second order to show cause. That response, however, is not an amended complaint, and thus once again is wholly insufficient.

#### CONCLUSION

Because plaintiff has failed to respond to the undersigned’s two orders directing him to file an amended complaint, and because his original complaint remains deficient for the reasons set forth in those orders, the Court should dismiss this case with prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 72(b), the parties shall have ten (10) days from service of this Report and Recommendation to file written objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **May 26**,

1 **2006**, as noted in the caption.

2 DATED this 2nd day of May, 2006.

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6 Karen L. Strombom  
7 United States Magistrate Judge  
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